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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,)

Plaintiff,)

vs.)

GERALD ARMSTRONG,)

Defendant.)

No. C 420 153

MARY SUE HUBBARD,)

Intervenor.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, FEBRUARY 11, 1985

APPEARANCES:

(See next page)

COPY

NANCY L. HARRIS, CSR #644
Official Reporter

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Also present:

GERALD ARMSTRONG

1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 11, 1985; 9:15 A. M.

2 -oOo-

3 THE COURT: Well, good morning.

4 MR. RANDOLPH: Good morning, Your Honor.

5 THE COURT: All right. We have the further proceedings
6 on this motion by the United States Government to have access
7 to certain exhibits which the court has previously sealed.
8 A lot of documents have been submitted to the court, and I will
9 state for the record that I have read and considered them,
10 submitted by both sides.

11 There are some objections to certain declarations
12 submitted by Gerald Armstrong and Laurel Sullivan, and those
13 will be deferred until later. I want to sort these things out
14 here.

15 All right, well, let's see. I don't know whether
16 I recognize everybody here. Can we have the names for the
17 record?

18 MR. RANDOLPH: Yes, Your Honor. I am Donald Randolph.
19 I represent the Church of Scientology of California in the
20 cross-complaint.

21 MR. O'TOOLE: Good morning. I am Jeff O'Toole. I was
22 here December 3rd. I represent the Church in the case in
23 Washington.

24 MR. HERTZBERG: Good morning, Your Honor. I also
25 had the pleasure of being here on the 3rd of December. I am
26 Michael Hertzberg, and I am representing Mrs. Hubbard in this
27 matter and we will be arguing on behalf of both Mrs. Hubbard
28 and the Church of Scientology.

1 MR. PETERSON: John Peterson. I represent the Church
2 of Scientology of California in the underlying complaint.

3 MR. MAGNUSON: And Michael Magnuson on behalf of Mary
4 Sue Hubbard in the underlying complaint.

5 MR. HERTZBERG: We also have a new face with us
6 today. Mr. Edward Copeland is in the firm of Rabinowitz,
7 Boudin, Standard, Krinsky & Lieberman.

8 I didn't actually think to ask Mr. Copeland's
9 qualifications before I addressed the court. I am sure he is
10 very well qualified. I have known him for a number of years.
11 He is a member of the New York Bar and various courts.

12 If we reach discrete issues with respect to the
13 motion to strike or seal various declarations, Mr. Copeland
14 is the person that we would request to address the court on
15 that.

16 THE COURT: As I said before, that is the last thing I
17 want to take up today.

18 MR. TOOTHMAN: Your Honor, I am John Toothman of the
19 United States Department of Justice. With me today is Janice
20 McClintock, also of the United States Department of Justice.

21 MS. McCLINTOCK: Good morning, Your Honor.

22 THE COURT: All right. Well, we are going to first deal
23 with the motion relative to the different exhibits.

24 MR. RANDOLPH: Your Honor, I wonder if I might interrupt
25 for a moment as representative of the Church of Scientology
26 in the cross-complaint.

27 The court is aware that there is a 170.6 challenge
28 to this court's jurisdiction which is still pending in the

1 Court of Appeal by way of writ of prohibition and in the
2 alternative mandamus.

3 Therefore, it is the Church's position that
4 inasmuch as the rulings that the court -- the issues presented
5 to the court this morning undertake to affect the rights and
6 potential exhibits in that case, we feel that this court has
7 been divested of jurisdiction until the Court of Appeal has
8 ruled in order to undertake the issues before this court.

9 THE COURT: All right. You have made your statement.

10 MR. RANDOLPH: Your Honor, secondarily, I wish to note
11 that I hope that the court will accept that my presence here,
12 having made that statement, can be in no way designated as a
13 waiver of our challenge to the court under the 170.6 challenge.

14 THE COURT: Well, you have made your statement.

15 MR. TOOTHMAN: I think we want to make one statement,
16 also.

17 THE COURT: I am going to make this statement. We are
18 not going to have about five different people from the plaintiff
19 or cross-defendants here arguing on these exhibits. We will
20 deal with one exhibit at a time and/or a group of exhibits,
21 and only one counsel is going to argue on behalf of the
22 plaintiff or cross-defendants on that particular aspect. We
23 are not going to have a round-robin type of situation here,
24 and I am not going to get sandbagged between half a dozen
25 different lawyers for the plaintiff or the cross-defendants.
26 You can make your mind up who is going to address the court
27 on a particular exhibit or group of exhibits and that will be
28 it. ➤

1 this, also, but I don't see any relevancy. It doesn't really
2 add up to much, so I will sustain the objection.

3 I think that leaves us with five C's. I have never
4 heard these tapes played. I have seen some, I think, drafts
5 of portions and I think parts of them.

6 There is a different problem here as far as the
7 attorney-client privilege is concerned, because it is my
8 recollection of the evidence that these were turned over to
9 Mr. Armstrong as being blank tapes, so that I felt at the time
10 there wasn't any intelligent waiver, giving over of confidential
11 communications, something that was still in confidence.

12 I know that there were attorneys involved in these
13 conversations that were played on tape and attorneys have
14 submitted declarations which I don't question.

15 These are responsible, ethical lawyers in the
16 Los Angeles community that have made these representations and
17 I accept them as what they are. The problem, as a legal
18 proposition, is that notwithstanding what the lawyers may feel
19 about whether they are acting honestly and in good faith, what
20 if the people they are consulting with are not and are seeking
21 to use the lawyers to seek to achieve some unlawful purpose,
22 although the lawyers are acting honestly and in good faith.
23 At least that seems to me the posture of the case or the issue
24 here.

25 The declarations of Mr. Armstrong and Miss Sullivan,
26 and then there is a contrary declaration by Ms. Britowich.

27 So with that in mind, I will hear from both sides.
28 Since³ the government is the moving party on this, I will hear

1 them first.

2 MR. TOOTHMAN: Your Honor, we have argued two reasons
3 why even if the attorney-client privilege applies, why the
4 court cannot find it's been overridden on this situation.

5 The first ground is waiver. We find a waiver from
6 two different sets of circumstances.

7 The first is how the tapes came into Mr. Armstrong's
8 possession. We have submitted a new declaration from
9 Mr. Armstrong which we submitted with our reply brief. It
10 explains how he got the tapes, and in that declaration it seems
11 plain that there was an understanding of what the tapes were
12 and why they were being given to him, and there was a knowing
13 waiver or giving of the tapes to Mr. Armstrong for his turning
14 them over to Mr. Garrison.

15 Second of all, Your Honor, the Church has made
16 various arguments and statements about what MCCS was all about,
17 and we believe under Section 912, they at least engaged in a
18 limited waiver of the privilege with respect to these tapes,
19 because they made a significant disclosure of what the project
20 was all about, and the tapes would only be useful then to
21 determine whether or not the Church's representations were
22 correct.

23 Second of all, Your Honor, we have argued that the
24 tapes reflect the planning or commission of crimes or fraud
25 which would be an exception to the privilege, also. We have
26 offered to support our statement with various pieces of
27 information. We have offered declarations by Gerald Armstrong,
28 two of them, one of them attached to the reply and one attached

1 to our initial memorandum.

2 Both of these declarations describe the Mission
3 Category Sort Out, and it is based on his personal knowledge,
4 what its purposes were.

5 Second of all, we have offered a declaration from
6 Laurel Sullivan which also describes M CCS based on her personal
7 knowledge and concludes that the project was intended to plan
8 to commit the crime of fraud. These conclusions one can draw
9 from looking at these declarations. These declarations
10 represent extrinsic evidence of the crime of fraud involved.

11 Of course, the tape recordings themselves would
12 also be the best evidence of exactly what was going on in this
13 particular case in the course of M CCS.

14 To put this all in context, we have also offered
15 other extrinsic evidence of what M CCS might have been about
16 based in part on the stipulation of evidence from the Mary Sue
17 Hubbard crimes case, the Tax Court's decision and proceedings
18 in this case. These are all proceedings in which decisions
19 have been made which would suggest that M CCS was part of a
20 pattern.

21 Now we are not saying that the stipulation or the
22 Tax Court decision talked about M CCS specifically. They deal
23 with things that happened before M CCS, but they show the
24 pattern. They are circumstantial proof of the kinds of things
25 the Church has done to foil principally the IRS, basically to
26 mislead the IRS about L. Ron Hubbard's control of the Church,
27 the money he received from the Church and the Church corporate
28 structure. This is all being done as part of an elaborate

1 scheme to avoid responsibility under the law for paying taxes.

2 We believe that the Tax Court decision and the
3 stipulation of evidence are good, circumstantial evidence of
4 the types of things the Church was doing that might be construed
5 to be fraud or crime.

6 In fact, for instance, the Tax Court decision
7 specifically found that the Church had violated 18 USC Section
8 371, which has to do with tax evasion, I believe. However,
9 it is described completely in our brief.

10 We would also point out that in terms of technically
11 invoking the privilege with respect to the tapes, we do have
12 some technical problems. We understand that Your Honor is
13 satisfied that there were attorney-client communications going
14 on, but we would simply point out that our analysis of the
15 Murphy declaration and the Britowich declaration submitted by
16 the Church shows that it is very confused about exactly what
17 was going on, who was there, who they represented, whether
18 there actually was an attorney-to-client communication for
19 purposes of seeking legal advice.

20 It even appears from Mr. Murphy's declaration that
21 he probably wasn't even attending the very meetings in question
22 here, at least we haven't seen any indication that he was from
23 either of the declarations, and he doesn't come out and say
24 it in so many words.

25 That is all we have to say, Your Honor.

26 THE COURT: Mr. Hertzberg?

27 MR. HERTZBERG: Yes, Your Honor.

28 As I think the court recognized in its preliminary

1 remarks, this court has previously rejected, in the transcript
2 at Page 4636, this waiver argument that the government is
3 attempting to resuscitate, an argument that was made by
4 Mr. Flynn, the exact same argument at trial, and there is
5 nothing factually in the new Armstrong declaration which was
6 submitted by the government.

7 After we had pointed out what the law was on this
8 issue and the prior ruling of the court, there is nothing new
9 which could in any way enable this court to find that there
10 was a waiver.

11 I think that clearly the point that they are
12 pinning all their hopes on is this generalized, fairly
13 unspecific crime of fraud allegation which they make, in
14 essence, in the following way.

15 Mr. Toothman referred to the stipulation of
16 evidence in the criminal case. Of course, that criminal case
17 had nothing to do with control of the Church and the IRS and
18 whatever the Church's corporate relationships might be among
19 various entities and Mr. Hubbard. Mr. Toothman knows that.

20 He also acknowledged and conceded that the Tax
21 Court case was four years before these tapes were involved.
22 I want to pause for a moment when we discuss the Tax Court
23 decision because the Tax Court decision which found that there
24 was inurement did not -- and which is on appeal, is exactly
25 an example of the kind of reason that one retains corporate
26 and tax expert attorneys to help one avoid these kinds of
27 problems.

28 Inurement in itself is not a fraud and inurement

1 is not a crime. The result of inurement is one loses a
2 possible tax benefit, a tax exemption. Nothing nefarious about
3 that but, of course, an organization that might have had a
4 certain amount of disarray in its corporate and interpersonal
5 structures might want to avail themselves of a tax exemption
6 and all the tax benefits that any United States citizen would
7 normally want to avail themselves if they are available.

8 So, what do they do? They go and consult attorneys,
9 attorneys who are experts in these matters, to straighten
10 things out. Lay people can't straighten these things out, and
11 I think that is significant, too. Attorneys straighten them
12 out, and there is no dispute that essentially attorneys were
13 brought in here to help the church at a juncture subsequent
14 to the years in which later on inurement was found, to help
15 the church restructure its organizations.

16 Now, the Armstrong case, which is the only other
17 proceeding that Mr. Toothman incorporates by reference to the
18 crime/fraud theory, it seems to be Mr. Toothman is relying on
19 the findings of this court, which have yet to be held on appeal,
20 about some bad acts, a private dispute between Mr. Armstrong
21 and the Church which has become public, unfortunately, in
22 litigation, and I think the picture he is trying to paint is
23 the Church is bad. Mr. Hubbard is bad.

24 . Look at a general pattern, Judge. That is what
25 Mr. Toothman is saying. Look at a general pattern. These are
26 bad people. Everything they do, even when they hire attorneys
27 and consult with them, has to be for a bad purpose.

28 ➤ That is the kind of theory that we are hearing,

1 and I submit that that is not enough. That is not sufficient
2 in the context of these tapes.

3 Now, let's look at these particular declarations,
4 because that is the only other thing that the government relies
5 on for their independent proof. Not only will I hope to
6 convince this court that those declarations did not support
7 the government's position, but, in fact, I think that the
8 declaration of Laurel Sullivan is very close, closely aligned
9 to the declaration of Lisa Britowich and of the attorney
10 Murphy, and that it, in fact, substantiates our position on
11 the presumptively privileged and legitimate aspect of these
12 conferences.

13 We will turn to Mr. Armstrong first. The first
14 declaration that Mr. Armstrong submitted, your Honor, is
15 essentially a recycling of a prior declaration that he
16 submitted in this case, which was sealed by this court at
17 Page 4692 of the transcript, and why does the court seal it?
18 Because Mr. Armstrong does something impermissible in the
19 context of California evidentiary law.

20 He relies on the contents of the privileged
21 document to try to pierce the privilege. That is what this
22 first declaration is.

23 As you know, Your Honor, there is pending, as Your
24 Honor referred to earlier in the hearing, as indicated, we will
25 defer to the end of the day, there is a brief which indicates
26 why this declaration and his second declaration and
27 Miss Sullivan's declaration are not properly in the record.
28 All three of them are not properly in the record in this court.

1 This one is just a retread. It is almost identical
2 if it is not, in fact, the identical declaration that was
3 excluded by this court at Page 4692.

4 While I am at that, while I have touched for the
5 moment on the prior rulings of this court, let me indicate to
6 this court, remind this court of what other evidentiary rulings
7 it made at the trial on these tapes.

8 At 4367 the court found that the conversations
9 were presumptively within the attorney-client privilege, also
10 at Pages 259 and '60.

11 This court, as you will recall, restricted Laurel
12 Sullivan's testimony at trial to facts that she learned before
13 February '80 -- excuse me, before February of 1980, the time
14 that the first of the two MCCS Missions started up.

15 This court sealed or struck the Armstrong
16 declaration, which is similar to the new one that the
17 government is submitting, out. As I indicated and this court
18 said at several points, you can't show the tapes are not
19 privileged by the contents.

20 I think Your Honor is aware of that and accepts
21 that as a premise for our discussion today.

22 Now, let's turn to the second Armstrong declaration.
23 It is interesting for several reasons.

24 First of all, the kinds of allegations it makes,
25 it goes way beyond anything that Laurel Sullivan said, and as
26 Your Honor will recollect at trial, it was Mr. Flynn's position,
27 and I think it was accepted by this court, that if anybody
28 knew or the person who knew more about the MCCS Mission between

1 Mr. Armstrong and Miss Sullivan had to be Miss Sullivan. That
2 Mr. Armstrong's position was tangential, to say the least, and
3 yet Mr. Armstrong makes these extremely overbroad, generalized
4 allegations, including the one at paragraph 2 on Page 3 -- I
5 think it is misnumbered, should be Page 2, in which he says
6 all of the activities performed by anyone involved in the MCCS
7 Mission, including the attorneys, was done for a fraudulent
8 purpose and, in fact, Your Honor, the government's theory in
9 their papers was that the attorneys were active participants
10 in this fraud.

11 It is in their briefs, and Your Honor, I think,
12 in beginning this and leaving open the possibility, left open
13 the possibility that the attorneys were dupes, that these
14 attorneys, who are prominent firms in this city, were so
15 unsophisticated that they could be used by the people of the
16 Church of Scientology to perpetrate a fraud. That they could
17 be used in the furtherance of a fraud.

18 This is not even the government's theory. That
19 is not what Mr. Armstrong says. Mr. Armstrong says the lawyers
20 were part of the fraud, and I think this court should hold
21 their feet in the fire, that if you don't buy that theory, it
22 all goes out the window because that is what Mr. Armstrong is
23 saying. He is putting his credibility on the line, and that
24 is what the government says in their brief, I think, at Page
25 21. I am not sure.

26 Then he makes the conclusionary statement in
27 paragraph 3:

28 "The two meetings which were described

1 "in my prior affidavit were part of a series
2 of meetings whose purpose it was to obtain
3 the fraudulent and illegal objective of
4 the MCCS Mission."

5 He says those meetings had to be part of it. That
6 is pretty interesting. Let me tell you what there is in this
7 record, Your Honor, that could support a finding by Your Honor
8 that Mr. Armstrong was not in a position to make that kind of
9 allegation.

10 As the court will recall, there was a representation
11 made, not rebutted by Mr. Flynn at the trial, that there were
12 two stages of the MCCS project. There was a first project that
13 began in 1980 in February, and then there was a second MCCS
14 project which began in July of 1980, six months later, and that
15 it had a separate set of mission orders.

16 Mr. Armstrong, who clearly doesn't say he attended
17 these meetings and who clearly doesn't describe what relation-
18 ship he had, what positions he was in to observe what the
19 purpose of the second MCCS project was which was going on in
20 September of 1980 when these meetings occurred, Mr. Armstrong
21 doesn't tell you why he would know anything about that and,
22 in fact, the record will indicate that he couldn't because we
23 have, Your Honor, a declaration of Mr. Armstrong made up in
24 1982, not one of these recent declarations in contemplation
25 of this litigation by, let's face it, a hostile or adverse
26 witness who has been sued by the Church and now has a claim
27 pending against him. 1982, Your Honor.

28 What does Mr. Armstrong say in 1982 before he

1 talks to the government or before he knew what the issues
2 might be here. I will begin with paragraph 12:

3 "In or about June of 1980 I became
4 free of my MCCS and Purification campaign
5 duties and was able to spend more time on
6 the archives materials."

7 Et cetera, et cetera.

8 That is interesting. One month before the second
9 MCCS project, which was the one that is at issue here, he is
10 free of his MCCS duties. And then we have a little help in
11 paragraph 14 from Mr. Armstrong as to what he was doing after
12 he was free from them:

13 "In September of 1980" -- I quote --
14 "I met Mr. Garrison in England and discussed
15 with him the possibility of him writing the
16 biography and what documentation and assistance
17 would be made available."

18 Now, September is when these two meetings took
19 place, the 28th and 29th, according to the government. We
20 don't quibble with that.

21 What was Mr. Armstrong doing in September?
22 According to the record in this case, Exhibit 9, Your Honor,
23 in September, including the 28th and 29th of September when
24 these meetings took place, when these lawyers were in the most
25 concentrated aspect of their consultations and meetings with
26 the client, Mr. Armstrong is in England because, according to
27 Exhibit 9, this voucher that Mr. Armstrong with his signature
28 submitted for reimbursement, among other things, phone calls

1 made in England in pence, five pay phones in U.K. on the 28th.
2 There are some of them on the 27th, on the 29th and days after-
3 ward.

4 Mr. Armstrong wasn't here, Your Honor. I would
5 submit that in view of what this court knew already about
6 Mr. Armstrong's tangential relationship to the project at its
7 inception, what this court knows from this declaration about
8 Mr. Armstrong's total noninvolvement with the second stage of
9 the MCCS project, the stage that Mr. Murphy's declaration
10 addresses, this court's knowledge from Exhibit 9 that
11 Mr. Armstrong and from his own declaration was in England
12 during the time of the meetings we are talking about, two-
13 specific meetings, when we talk about these tapes, the
14 discrepancies between what Mr. Armstrong is willing to say and
15 including allegations that the lawyers were involved in fraud,
16 and Ms. Sullivan is willing to say, I say to Your Honor that
17 you should not give any weight to Mr. Armstrong's second
18 declaration.

19 You must disregard his first one because it
20 contravenes the prior rulings of this court in accordance with
21 the California statutes, which does not allow these kinds of
22 conclusionary allegations to be made on the basis of the
23 material which they are seeking to pierce.

24 Let's turn to Miss Sullivan's declaration, because
25 this is the one I like. This is dated August 20, 1984, and
26 it consists of 19 paragraphs. This is a big independent proof,
27 Your Honor, on the crime of fraud.

1 Incidentally, I know parenthetically I don't
2 think the government is serious about the crime allegations
3 and they have back-pedaled severely in their reply papers
4 because after they read our listing of the statutes, they
5 cited that they may have violated this statute, they may
6 have violated that statute, they could have violated this
7 statute, and when we cited the law to the government on
8 how mere allegations of counsel and speculation are not
9 sufficient, they didn't seriously press it.

10 They, I think, realistically, Your Honor,
11 are pursuing the theory of a fraud, a fraud in which the
12 lawyers participated knowingly and turning to the two
13 paragraphs here which Miss Sullivan addresses the Corporate
14 Sort-Out, I want to focus on paragraph 17 in which she
15 describes the exact sequence of events, and I am going to
16 read the whole paragraph:

17 "Numerous proposals for this
18 restructuring were developed and discussed
19 by high officials of the Church."

20 Now, listen to this:

21 "Legal advice was also sought
22 to ascertain whether the restructuring could
23 be accomplished legally. The project dragged
24 on for longer than necessary because of a
25 disagreement I had with David Miscavige.
26 I was unwilling to structure the Church
27 in a fashion whereby L. Ron Hubbard could
28 ➤ continue to assume control at any moment.

1 I determined that for L. Ron Hubbard's own
2 safety he should never" --

3 THE COURT: There is no "never" in there.

4 MR. HERTZBERG: I am sorry. Did I say "never"?
5 I meant "sever, he should sever all controls." I misspoke,
6 Your Honor.

7 "I determined that for L. Ron Hubbard's
8 own safety he should sever all controls.
9 Miscavige insisted that L. Ron Hubbard be
10 able to maintain control. Therefore,
11 Mission Corporate Category Sort-Out was
12 disbanded ... " et cetera, et cetera.

13 First of all, out of Miss Sullivan's own
14 mouth, and this is a much more narrow and I think proper
15 interpretation of what was going on, the legal advice was
16 also sought so as to ascertain whether the restructuring
17 could be accomplished legally.

18 That fits in exactly with Lisa Britowich's
19 declaration. It is not inconsistent with it in any way.
20 It is completely and entirely consistent with Mr. Murphy,
21 the attorney's declaration.

22 What I find very interesting here, in
23 addition, Your Honor, is the statement that there was a
24 dispute within the Church about how to utilize the on-going
25 advice that was being given by the attorneys. This doesn't
26 speak of a single fraudulent, omnipotent fraudulent
27 purpose as implied by Mr. Toothman in their papers and in
28 their argument. There was discussion. There was eventually

1 a dispute about what course of action to follow.

2 Subsequently other lawyers were hired.

3 Now, Your Honor, that doesn't bespeak of
4 this fraudulent purpose at all. That bespeaks of an
5 attorney-client relationship in the traditional sense in
6 which lawyers are hired to consult, to be consulted, to
7 determine whether corporate restructuring could be done,
8 how it can be done in a legal way, and then a discussion
9 internally about how to utilize their advice. Then, in
0 fact, at the end significantly hiring other lawyers, not
1 going off on their own, the Church hiring other lawyers for
2 advice.

3 I would presume that you would ascribe for all
4 lawyers from your remarks that they would not be party,
5 that there would be a presumption by this court, that they
6 would not be a party to a fraud.

Now, let's turn to what is against this
7 declaration and let's leave aside Lisa Britowich's declaration
8 for a moment. Let's look at Mr. Murphy's declaration.
9 What does Mr. Murphy tell us? He is from a prominent firm,
0 the Rosenfeld firm. There were other prominent firms
1 involved; Ball, Hunt and Ervin, Cohen & Jessup. These are
2 names which I understand are among the cream of the cream
3 in Los Angeles corporate law firm world. He is in there
4 and this is a man of experience. This is not a man who
5 is one year out of law school, Your Honor. He has many
6 years of experience in his area of expertise is in corporate
7 and tax matters, Your Honor, and he has a colleague from

1 the firm whose area of expertise is intellectual property.
2 All these areas of expertise are exactly coincident with
3 what Lisa Britowich said is the purpose of this MCCS project
4 which was to sort out the Corporate problems that may have
5 existed which we know, in fact, from the tax court decision,
6 if it is upheld, probably did exist, and to look out for the
7 different, separate Corporate lines which included, of
8 course, the entertainment kinds of fields because obviously
9 some of the properties dealt with writings of Mr. Hubbard,
10 films of Mr. Hubbard.

11 We don't have some clients going to some
12 perhaps second or third-rate lawyer or firm and slinking
13 into the night and asking them for advice, Your Honor.
14 There was a whole line-up of people there. There were
15 many attorneys, and they were in areas of specialty, the
16 appropriate specialties, Your Honor, for exactly this
17 kind of project.

18 Mr. Murphy says he dealt with Laurel Sullivan
19 on almost a daily basis, that Laurel Sullivan knew that the
20 purpose of this mission, what it was, that there should be
21 attorney-client privilege confidentiality, and most
22 important of all, Mr. Murphy points out that there was
23 full disclosure to him, lots of disclosure. There was lots
24 of paper going back and forth between the law firms and
25 the client and, of course, there were the conferences,
26 lots of consultations, Your Honor.

27 This isn't somebody going to somebody and
28 saying, "How can I get a phony export license? How can I

1 get around this? How can I get around that?"

2 There are all these lawyers there, Your
3 Honor. They are all from prominent firms. They are doing
4 what they do all the time. They are giving a corporate
5 client with multiple tax and corporate problems advice in
6 a sophisticated way about how to handle these matters and
7 take right anything that was wrong and, of course, the
8 government recognizes from the Upjohn case and all the other
9 cases that that is exactly what you do when you go to a
10 lawyer.

11 You can't very well have a lawyer help you
12 if you don't tell him where the skeletons are in the closet.
13 You can't do that, so, of course, in the course of the
14 communications, including apparently these conferences,
15 there was a frank discussion about where the state of
16 affairs were at the time, but that doesn't mean, it
17 doesn't follow from that that these discussions were in
18 furtherance of a future crime or fraud which, of course,
19 Your Honor knows is what is required by the statute and the
20 other things Mr. Murphy says are there was not any indicia
21 of crime or fraud in his view, not an indicia of it or he
22 and his firm would have withdrawn.

23 I submit to Your Honor if the government
24 abandons their theory as stated in their brief that the
25 lawyers were part and parcel, knowing participants in this
26 crime and fraud and now argues, because you have left that
27 crack open, the possibility that they were unwitting dupes,
28 you are doing a tremendous disservice to Mr. Murphy and his

1 firm, and all the other lawyers who are out there.

2 We submitted Mr. Murphy's declaration because
3 we think it will be dispositive, but you have to imply that
4 none of those people knew that they were having the wool
5 pulled over their eyes by people who never went to law
6 school, by people who were working in the church. That
7 is what is implicit in even the unwitting dupe argument,
8 Your Honor, which is the one you addressed, and I would
9 say, Your Honor, that is unrealistic.

10 I want to indicate as far as your consideration
11 of the tapes is concerned, this is our position and it is
12 supported by the case law. It is clear that in the first
13 instance in considering whether they can make a prima facie
14 case that overrides the privilege, it is abundantly clear
15 and has been recognized by this court that you may not go
16 to the contents of the case. You must only look at their
17 purported independent evidence. Now, if you find that there
18 is a prima facie case, and we all know what prima facie
19 means, the lawyers and the judges. Prima facie means
20 a threshold showing. We do not believe it is at that point
21 that you can listen to the tapes and argue and we would
22 also at that point suggest that there be an in-camera
23 submission of various documents that we would make, including
24 the Mission Corporate Sort-Out order that applied to this
25 Mission which is applicable, which is directly applicable
26 here, and other materials which we consider privileged,
27 Your Honor, and we would submit those to you in camera and
28 then you can resolve what it is that might be inconsistent,

1 if there are inconsistencies between what Laurel Sullivan
2 says and what Jim Murphy and Lisa Britowich say.

3 That has to be the second step. Prima facie
4 means just what it means. It means prima facie, and we
5 maintain that they are nowhere near having a prima facie
6 case on this record before Your Honor, nowhere near it,
7 keeping in mind Mr. Murphy's declaration especially and
8 the language of Laurel Sullivan's declaration, knowing how
9 the advice of the attorneys was considered by the Church.

10 But if you do find that they reached a prima
11 facie case, that is the beginning of the inquiry. It is
12 not the end of the inquiry. Then, at that point you can do
13 what Mr. Toothman suggests you do but which the California
14 law doesn't say you can do, and that is listen to the tapes.

15 THE COURT: Anything further, Mr. Toothman?

16 MR. TOOTHMAN: I will try to be brief.

17 Your Honor, we brought Laurel Sullivan and
18 Gerry Armstrong to the courtroom today. If there is
19 any question about what they meant by their declarations
20 or whether declarations might be inadequate, we'd be more
21 than happy to put them on the stand and have them testify.

22 I will be done in a few minutes.

23 First of all, Mr. Hertzberg's description of
24 the tax court decision left out a couple of things. He
25 did admit that the tax court decision concerns inurement
26 to Mr. Hubbard and his family. He omitted to describe
27 the fact that the holding is also based on the court's
28 finding that the Church was engaged in a commercial

1 enterprise, and that this Church's behavior was against
2 public policy and therefore that the Church was not entitled
3 to tax exemption.

4 Your Honor, perhaps the best evidence of what
5 went on at MCCS on that day is the fact that as Mr. Armstrong
6 has stated in his declaration based on his listening to the
7 tapes which were given to him and then from him to
8 Mr. Garrison, in the words of the Church's own attorney,
9 Mr. Parcelle, he described what had happened as fraud.
10 I think there couldn't be any more powerful evidence of
11 exactly what went on that day.

12 The attorneys' intent and the fact that they
13 belonged to reputable law firms, and the fact that they
14 are extremely reputable attorneys in particular fields is
15 not relevant, Your Honor. It is the intent of the clients.
16 Your Honor has already pointed this out and we pointed it
17 out in our briefs.

18 We are not saying these attorneys were
19 involved in the fraud. We are not saying they were duped.
20 We are not saying anything about that. The only thing we
21 are concerned with is the Church's intent.

22 As Mr. Hertzberg has acknowledged, we need
23 only make a prima facie showing, which is something more
24 than a bare allegation. I think we have done this. We
25 have three declarations. We have declarations based on
26 other proceedings. I think it should be adequate. We
27 don't believe a further hearing is necessary. We have
28 been through this for six months already.

1 When we suggested that evidence should be
2 offered today, the Church spent a great deal of time and
3 effort to make sure that couldn't be done. If Your Honor
4 listens to the tapes or perhaps just based on the
5 declarations we have offered, I think that there is ample
6 evidence for the court to conclude according to any
7 standard that the crime fraud exception to the privilege
8 has been established.

9 Turning to Mr. Armstrong's first declaration,
10 it is not true that it is all based just on his listening
11 to the tape recordings. Mr. Hertzberg has testified himself
12 personally at length about where Mr. Armstrong was at various
13 times.

14 I think Mr. Armstrong is very clear that he
15 is talking about, number one, his knowledge of MCCS, his
16 personal knowledge of MCCS which is, even Mr. Hertzberg
17 seems to admit, is something that he could have had even
18 though he was in England on the particular days in question.

19 Second of all, he does quote from the tapes
20 themselves in referring to the declaration we submitted
21 with our memorandum. Mr. Armstrong unequivocally states
22 in paragraph 3 of his declaration:

23 "The purpose of MCCS was to
24 restructure the Church of Scientology and,
25 by so doing, conceal L. Ron Hubbard's control
26 of the Church of Scientology and develop
27 strategies to effectuate actual control
28 of Scientology by Mr. Hubbard without his

1 incurring legal responsibility for the activities
2 of the Church of Scientology."

3 I think it is pretty clear that is not
4 conclusionary. He just states a fact. However, any
5 lawyer can look at these facts and wonder about whether
6 fraud had been committed or even a crime.

7 Mr. Armstrong's second declaration in
8 paragraph 2 he again discusses the initiation of the M CCS
9 Mission which Mr. Hertzberg has admitted Mr. Armstrong is
10 privy to, and in the third sentence of his second paragraph
11 of this particular declaration which was submitted with
12 our reply brief as exhibit C, Mr. Armstrong states:

13 "This" — meaning the M CCS —
14 "was done to hide Hubbard's control of the
15 Church of Scientology and the numerous benefits
16 he inured from it."

17 That is based on his personal knowledge of
18 what was going on at that time because he was involved in
19 the M CCS up to a certain point.

20 Finally, Mr. Hertzberg discusses Laurel
21 Sullivan's declaration at length. He particularly focuses
22 on paragraph 17. I would focus on paragraph 16 which
23 discusses again the purposes of M CCS and states:

24 "The structure I was to establish
25 was also intended to facilitate the funneling
26 of Scientology funds to L. Ron Hubbard to
27 avoid impairing the tax-exempt status of the
28 Church due to the distribution of Church funds

1 for Mr. Hubbard's personal benefit."

2 She continues:

3 "Another goal of this project
4 was to insulate Mr. Hubbard from legal
5 process by creating the impression that
6 Mr. Hubbard was no longer associated with
7 the Church."

8 Again, these are not conclusionary statements.
9 They are facts that she knew. They are also facts that
10 suggest that the purpose of this program was to commit
11 fraud.

12 Just put this in context at the time MCCS
13 was being planned the tax court litigation which he discussed
14 in which he even offered the opinion from was then going
15 on, so it was most convenient that the Church could be
16 sitting down at that time to be doing this tax planning at
17 the same time that it was trying to take some sort of
18 litigation posture before the tax court.

19 Mr. Hertzberg has suggested that we are
20 withdrawing from our previous position on whether crimes
21 have been committed in addition to the fraud. Frankly,
22 Your Honor, we don't like to make allegations about whether
23 crimes have been committed until we see the evidence. We
24 believe based on what we know about MCCS from the
25 declarations and from these proceedings in the Armstrong
26 court that it is a possibility that crimes were being planned,
27 but we don't want to say without hearing the tapes whether
28 that is a fact or not.

1 We were using general language or language
2 that seemed to be conditional merely out of an abundance
3 of caution with respect to the Church. We didn't want to
4 make an accusation that we couldn't prove.

5 Finally the MCCS project was clearly a
6 planning project. It wasn't a project based on just the
7 review of historical facts. I believe Mr. Murphy's
8 declaration, also the Church brief makes it quite clear
9 that the purpose of MCCS was perhaps to plan in light of
10 past facts, but certainly above all else to plan for the
11 future.

12 That concludes my remarks, Your Honor.

13 | THE COURT: Well, I guess I have heard you gentlemen
14 talking for some time and I have had a lot of thoughts
15 about this thing for a long time, and I start up with the
16 proposition that at the trial I was not satisfied there was
17 a waiver and nothing has been submitted to me since that
18 would convince me to change my position that there was not
19 a waiver.

20 As I recall the evidence and the declaration,
21 the tape was given to Mr. Armstrong with the apparent
22 belief that it was blank and he would use it for
23 dictating and for other purposes in the course of the
24 biography project.

25 As far as the crime fraud exception, of
26 course, I accept the California law that you can't look
27 at the conversation itself to make that determination. You
28 have to find other independent evidence. Mr. Flynn had a

1 lot of problem with that at the trial, I remember, and
2 so I operate from that assumption. If I am wrong, I am
3 wrong. But I operate from the assumption I cannot look
4 at what is on the tape to determine whether the crime fraud
5 exception applies.

6 Now, Mr. Armstrong's and Miss Sullivan's
7 declarations. Of course, they testified at the trial and
8 one of the problems that we had in the trial of this was
9 that a lot of information that Miss Sullivan became aware
10 of in this project was information that she became aware
11 of as part of this attorney-client situation. This
12 information that she became aware of and didn't want to
13 take the time or the effort at that time to try to sort it
14 out and try to figure out what perhaps she knew from her
15 previous experiences and that which she acquired as working,
16 in effect, as a legal assistant preparing for the Sort-Out
17 project.

18 I have already indicated I don't have any
19 quarrel with the credibility of Mr. Murphy. I am
20 satisfied that he was acting honestly and in good faith.
21 It brings us down to a problem of where this attorney-
22 client privilege stands and the role of the attorney,
23 while I suppose it has been denigrated in the public media
24 from time to time, it still plays an important role in our
25 society and in the manner in which we deal with the
26 courts and government and so forth. I think that probably
27 on balance that the public policy which favors full and
28 open communication between a client and lawyer has to

1 prevail over the suggestion that there was some secret
2 intent on the part of the person who is communicating with
3 the lawyer.

4 It would be too easy to set aside the
5 privilege if that were the fact, at least in the absence
6 of very strong evidence to that effect.

7 So, I am going to sustain the privilege solely
8 as to what is on that tape. I don't want anybody suggesting
9 that I have gone any further than that. Just as to what is
10 on that tape is concerned, I am finding that privileged.
11 I will sustain the objection.

12 MR. HERTZBERG: You mean both tapes?

13 THE COURT: Is there more than one?

14 MR. HERTZBERG: There are two tapes.

15 THE COURT: Whatever is here. I don't know what is
16 on them other than some reference to partial transcripts,
17 so that is the order.

18 Now, so far as this sealing, which affidavit
19 do you want sealed? Do you want me to order some affidavits
20 in some other litigation are sealed?

21 MR. COPELAND: No, Your Honor. We think that what
22 is here in front of Your Honor is the affidavits that have
23 been filed here. The situation is as follows, and I think
24 it will be very simple to deal with, Your Honor, and I
25 will not revisit any of the arguments that have come up.

26 There is the Armstrong affidavit in which
27 he sets forth the various, what he purports to be

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 57

HON. PAUL G. BRECKENRIDGE, JR., JUDGE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GERALD ARMSTRONG,

Defendant.

MARY SUE HUBBARD,

Intervenor.

No. C 420 153

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)
) ss
)

I, NANCY L. HARRIS, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 84, comprise a true and correct transcript of the proceedings held in the above-entitled case on February 11, 1985.

Dated this 12th day of February, 1985.

/s/ Nancy L. Harris CSR #644
Official Reporter